

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-1298V

UNPUBLISHED

FRANKLIN GALLO,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: March 23, 2020

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Tetanus Diphtheria acellular
Pertussis (Tdap) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for petitioner.

Julia Marter Collison, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On August 27, 2018, Franklin Gallo filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, et seq.,² (the “Vaccine Act”). Petitioner alleges that he suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of a tetanus, diphtheria, acellular pertussis (“Tdap”) vaccine administered on September 5, 2017. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 28, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for his SIRVA. On March 19, 2020, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

\$97,500.00. Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* at 1. Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$97,500.00 in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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FRANKLIN GALLO,

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SECRETARY OF HEALTH AND
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No. 18-1298V
Chief Special Master Corcoran
ECF

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

On August 27, 2018, Franklin Gallo (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, **42 U.S.C. §§ 300aa-1** to -34 (“Vaccine Act” or “Act”), which alleged that petitioner received a tetanus, diphtheria and acellular pertussis (“Tdap”) vaccination on September 5, 2017, and thereafter suffered a shoulder injury related to vaccine administration (“SIRVA”), which is on the Vaccine Injury Table. On January 28, 2020, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$97,500.00 in actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See 42 U.S.C. § 300aa-15(a)(4).* Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following¹: a lump sum payment of \$97,500.00, in the form of a check payable to petitioner, Franklin Gallo.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Franklin Gallo:	\$97,500.00
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Respectfully submitted,

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¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

/s/ Julia M. Collison
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Dated: March 19, 2020